

APPENDIX I
NFWF AGREEMENT

**NiSource Multi-Species Habitat Conservation Plan Fund
Memorandum of Agreement
Between
the National Fish and Wildlife Foundation
and
Various Subsidiaries of NiSource Inc.**

This Memorandum of Agreement (“Agreement”) to establish the NiSource Multi-Species Habitat Conservation Plan Fund (“MSHCP Fund” or “Fund”) is entered into by and among the National Fish and Wildlife Foundation (“Foundation”) and Columbia Gas Transmission, LLC, Columbia Gulf Transmission Company, Crossroads Pipeline Company, Central Kentucky Transmission Company, and NiSource Gas Transmission and Storage Company (“NiSource”) (collectively, the “Parties,” and individually, a “Party”), as of the date of the signature of the last Party to sign (“Effective Date”).

I. BACKGROUND

NiSource is engaged in natural gas transmission and storage services. NiSource currently maintains and operates over 15,000 miles of interstate natural gas transmission pipelines and appurtenant facilities. NiSource delivers annually about one trillion cubic feet of gas to 72 local distribution companies and several hundred gas end-users in southern, northeastern, Midwestern, and mid-Atlantic states. The NiSource operating territory traverses 14 states ranging from New York to Louisiana, and other NiSource operating companies deliver energy to 3.8 million customers located within the corridor stretching from the Gulf Coast through the Midwest to New England.

Operation and maintenance of NiSource’s facilities involve certain annual activities – including, but not limited to, routine right-of-way maintenance; facility inspection, upgrade, and replacement; and expansion projects – which may impact species protected by the federal Endangered Species Act (“ESA”). 16 U.S.C. §§ 1531-1544. The ESA and its implementing regulations prohibit the “take”¹ of listed species without authorization. However, a company may seek authorization by applying for an Incidental Take Permit, which is issued by the U.S. Fish and Wildlife Service (“Service”). 16 U.S.C. § 1539(a)(1)(B). To obtain an ITP, the permit applicant must prepare a Habitat Conservation Plan that, among other things, ensures that the applicant minimizes and mitigates the impacts of the taking to the maximum extent practicable. 16 U.S.C. § 1539(a)(2)(A & B).

¹ The ESA defines take as “harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct.” 16 U.S.C. § 1532(19).

NiSource worked collaboratively with the Service, in cooperation with the states where NiSource's pipeline system is located, to develop a Multi-Species Habitat Conservation Plan ("MSHCP") in support of a fifty-year ITP ("NiSource ITP"). The scope of the MSHCP encompasses certain NiSource operation, maintenance, and construction activities ("covered activities") associated with approximately 15,500 miles of NiSource pipeline and ancillary facilities in 14 states (map attached) over nine million acres of land ("covered land"). The MSHCP analyzes 43 federally listed and candidate species ("MSHCP species"), of which NiSource seeks incidental take coverage for ten species.

In light of the fifty-year permit term, mitigation for the taken species associated with NiSource's covered activities will be an ongoing process. The MSHCP identifies specific timeframes for mitigation funding to be secured and mitigation measures to be implemented. As provided in the MSHCP, mitigation may occur before, during, or after NiSource's covered activities commence. Consistent with the Service's ITP issuance criteria, NiSource agreed to assure funding for its mitigation obligations, in part by establishing the MSHCP Fund that is the subject of this Agreement.

Pursuant to Chapter 5.3.4 of the MSHCP, NiSource will establish a Mitigation Panel ("Panel"). The Panel will assist NiSource in determining which mitigation projects to pursue, under the terms provided in the MSHCP, NiSource ITP and Implementing Agreement ("IA"). The Panel will serve in an advisory capacity, and may also solicit proposals from various nongovernmental organizations, affected states, Tribes, academics, and others. Based on the Panel's recommendations, NiSource will propose mitigation projects, subject to the Service's final approval for consistency with the MSHCP, NiSource ITP and IA. Mitigation projects may be funded directly by NiSource, or at its request through disbursements from the MSHCP Fund.

NiSource will establish the MSHCP Fund with three separate but related sub-accounts. The first sub-account, referred to as the "Reserve Account," consists of an initial payment of \$100,000 (One-Hundred Thousand Dollars). The Reserve Account will be maintained at this amount to finance any unfunded obligations for mitigation, monitoring, adaptive management, or changed circumstances. The Reserve Account will provide a pool of cash for NiSource to draw upon if an unexpected situation develops or an underestimate becomes evident. However, it is possible that the Reserve Account will never be used during the life of the NiSource ITP. Additionally, every five years, NiSource will deposit a sum of money into the MSHCP Fund's Reserve Account to account for inflation, as reflected by the consumer price index. The goal shall be to maintain a balance of \$100,000 in 2010 dollars in the Reserve Account. The MSHCP, NiSource ITP and IA identify the process for drawing upon the Reserve Account.

The second sub-account, referred to as the "Mitigation Account," is intended to fund mitigation to compensate for the impact of the taking. The Parties anticipate that deposits into the Mitigation Account will vary from year to year, depending on the level of compensation that is required under the NiSource ITP and the MSHCP. The MSHCP, NiSource ITP and IA identify the various timeframes for deposits, depending on the type of covered activity being undertaken. They also obligate NiSource to make

necessary and regular adjustments to ensure the Mitigation Account is fully funded. Expenditures from the Mitigation Account will be at NiSource's direction, following the processes and mitigation criteria identified in the MSHCP, NiSource ITP and IA.

The last sub-account, the "Interest Account," will be used to hold any interest or investment income generated by the Reserve or Mitigation Accounts.

The MSHCP, NiSource ITP and IA also require that all costs to the Foundation of administering the MSHCP Fund (including deposit fees, annual fees, bank charges, etc.) will be borne by NiSource independent of the costs or mitigation criteria specified in the MSHCP. Administrative fees shall be in addition to, and not deducted from, amounts necessary to mitigate the impact of the taking (*i.e.*, shall not be deducted from the corpus of the MSHCP Fund).

II. AUTHORITY

The Foundation is a charitable non-profit corporation established in 1984 by the National Fish and Wildlife Foundation Establishment Act, 16 U.S.C. § 3701 *et seq.*, as amended ("Establishment Act"), and is recognized as a tax-exempt organization under Section 501(c)(3) of the Internal Revenue Code. In the Establishment Act, the Foundation is directed to undertake activities that further the conservation and management of fish, wildlife, and plant resources for present and future generations and is authorized to accept funds from any legal source to further its mission.

III. FOUNDATION RESPONSIBILITIES

- A. Upon establishment of the MSHCP Fund, the Foundation shall appoint an individual and an alternate (collectively, the "Foundation Representative"), who shall represent the Foundation in carrying out its obligations under this Agreement.
- B. The Foundation shall maintain the MSHCP Fund either in an interest bearing account at a financial institution that is a member of the Federal Deposit Insurance Corporation or the Securities Investment Protection Corporation or in a government securities-only investment account. For accounting purposes, the MSHCP Fund and its sub-accounts shall be distinguishable from all other accounts maintained by the Foundation. The Foundation shall also ensure that each deposit into the MSHCP Fund is tracked separately for accounting purposes into either the Reserve Account, Mitigation Account, or Interest Account, as appropriate.
- D. At NiSource's request, the Foundation shall create additional sub-accounts within the MSHCP Fund.
- E. At the direction of NiSource through written requests for disbursement, the Foundation shall use the MSHCP Fund to pay those requests for disbursements,

in accordance with the Foundation’s project management practices and policies, and consistent with the MSHCP, NiSource ITP and IA.

- F. The Foundation shall administer the MSHCP Fund consistent with Section V below.

IV. NISOURCE RESPONSIBILITIES

- A. NiSource shall appoint an individual and an alternate, (collectively, the “NiSource Representative”), who shall represent NiSource in carrying out its obligations under this Agreement.
- B. Prior to the implementation of the MSHCP, NiSource shall contribute an initial amount of \$100,000 into the Reserve Account. NiSource shall contribute additional amounts into the Reserve Account as specified by the MSHCP, NiSource ITP, IA and this Agreement.
- C. As specified in the MSHCP, NiSource ITP and IA, NiSource shall: (1) annually deposit an amount specified in the MSHCP to the Mitigation Account during each of the first seven years following the NiSource ITP permit issuance to cover mitigation costs associated with its operation and maintenance activities; (2) on or before March 31 of every year that the MSHCP is effective, deposit funds into the Mitigation Account to provide financial assurances for mitigation that is expected to arise from the small capital and O&M projects that do not require a certification under Section 7(c) of the Natural Gas Act; and (3) for projects that do require a Section 7(c) certificate, deposit the estimated amount to cover the coming year’s mitigation costs into the Mitigation Account at least 15 days prior to construction for each Section 7(c) certificate, and annually thereafter for multiple-year projects.
- D. As specified in the MSHCP, NiSource shall deposit into the Mitigation Account funds sufficient to cover new or increased mitigation obligations because of changed circumstances, adaptive management, refined estimates, increased project impacts, documentation of additional take or any other cause.

V. FUND ADMINISTRATION

- A. The MSHCP Fund will consist of three separate but related sub-accounts.
 - 1. The Reserve Account shall be created in the amount of \$100,000 (One-Hundred Thousand Dollars) to finance any unfunded obligations for mitigation, monitoring, adaptive management, or changed circumstances. The Reserve Account will provide a pool of cash for NiSource to draw upon if an unexpected situation develops or an underestimate becomes evident. However, it is possible that the Reserve Account will never be used during the life of the NiSource ITP. Additionally, every five years, NiSource will deposit a sum of money into the MSHCP Fund’s Reserve

Account to account for inflation, as reflected by the consumer price index. The goal shall be to maintain a balance of \$100,000 in 2010 dollars. The MSHCP, NiSource ITP and IA identify the process for drawing upon the Reserve Account.

2. The Mitigation Account shall be created to fund mitigation to compensate for the impact of the taking. The Parties anticipate that deposits into the Mitigation Account will vary from year to year, depending on the level of compensation that is required under the NiSource ITP and the MSHCP. The MSHCP, NiSource ITP and IA identify the various timeframes for deposits, depending on the type of covered activity being undertaken. They also obligate NiSource to make necessary and regular adjustments to ensure the Mitigation Account is fully funded. Expenditures from the Mitigation Account will be at NiSource's direction, following the processes and mitigation criteria identified in the MSHCP, NiSource ITP and IA.

3. The Interest Account will be used to hold any interest or investment income generated by the Reserve or Mitigation Accounts.

B. On or before the effective date of the MSHCP, NiSource will pay to the Foundation \$100,000, which the Foundation shall use to establish the MSHCP Fund and the Reserve Account.

C. Compensation for MSHCP Fund administration:

1. The Foundation shall assess, and NiSource shall pay, a Per Deposit Fee equivalent to 2.5% of the amount of each deposit into the MSHCP Fund. NiSource shall pay this Per Deposit Fee at the time each deposit is made, including the initial \$100,000 deposited into the Reserve Account. The Per Deposit Fee shall be paid by NiSource separate and apart from, and shall not be debited against, the amount of each deposit.

2. The Foundation shall assess, and NiSource shall pay, an Annual Fee equal to the greater of (a) 3% of the balance of the MSHCP Fund; or, (b) \$5,000. The Foundation shall assess and collect the Annual Fee annually at the end of each fiscal year in which the MSHCP Fund is in existence. By November 30 of each year, the Foundation shall invoice NiSource for the Annual Fee incurred in the prior fiscal year (October 1 to September 30). NiSource shall pay the Foundation's Annual Fee invoices within 60 days of receipt. If NiSource fails to timely pay any invoice from the Foundation, the Foundation may withdraw money from the Reserve Account or Interest Account to pay the Annual Fee, but only if such withdrawal is expressly approved in writing by the Service.

3. Bank charges assessed by any financial institution for managing the MSHCP Fund shall be paid from the Interest Account. To the extent investment income is insufficient to pay such charges, the charges shall be

invoiced by the Foundation to NiSource in the manner described in Part V(C)(2) of this Agreement.

- D. The Foundation shall report semi-annually, within 45 days of the end of the preceding quarter, to the NiSource Representative on MSHCP Fund activity for the previous quarter. Semi-annual reports shall include information as to deposit and payment activity of the Fund during that period.
- E. Additionally, the Foundation shall report annually, by December 15, to the NiSource Representative on MSHCP Fund activity for the previous fiscal year (October 1 to September 30). The Foundation shall report on deposits, disbursements, fees, and investment income, with a reconciliation of the remaining balance in the Fund. Upon request, the Foundation also shall provide the NiSource Representative with copies of its audited financial statements.
- F. No funds disbursed from the MSHCP Fund may be used by any recipient to pay for lobbying activities, litigation, or any illegal activities. Funds may only be disbursed in accordance with the terms and conditions of the MSHCP, NiSource ITP, IA and this Agreement.
- G. No funds disbursed from the MSHCP Fund may be used by any recipient (including the Service) to unlawfully augment federal appropriations to any federal agency, whether in violation of the United States Constitution, 31 U.S.C. § 1301(a) (the "Purpose Statute"), 31 U.S.C. § 1341 (the "Anti-Deficiency Act"), 31 U.S.C. § 3302(b) (the "Miscellaneous Receipts Act"), or other applicable law.

VI. TERMINATION

- A. This Agreement shall be in effect so long as the NiSource ITP is in effect, but may be terminated earlier by any of the Parties upon 60 days' written notice to the other Parties and with the written approval of the Service pursuant to Section 7(D) herein. While the Agreement is in effect, the Parties shall review its terms every 10 years to determine whether revisions to this Agreement are appropriate. Prior to termination, the term of this Agreement may be extended by written agreement of the Parties.
- B. Within 90 days after receipt of a notice of termination from any Party, the Foundation shall provide to the NiSource Representative a full and complete accounting of all MSHCP Fund activity, including deposits, disbursements, fees, and investment income with a reconciliation of the remaining MSHCP Fund balance. In conjunction with such accounting, the Foundation shall submit to NiSource for approval any final payment requests from recipients of monies from the MSHCP Fund.
- C. In the event of termination of this Agreement prior to all monies in the MSHCP Fund having been expended, the Foundation shall immediately undertake all reasonable steps to terminate the MSHCP Fund in a cooperative manner with

NiSource. It will be the responsibility of NiSource to satisfy any previously determined level of compensation under the NiSource ITP and MSHCP that has not been otherwise satisfied.

- D. If this Agreement is to be terminated prior to the termination of the NiSource ITP, the Foundation and NiSource shall first secure the written approval of the Service after mutually agreeing to a successor trustee of the MSHCP Fund, if necessary.
- E. The balance of the Reserve Account shall be returned to NiSource in the following circumstances: (1) termination of the MSHCP Fund; (2) expiration or termination of the NiSource ITP; (3) the failure by the Service to issue an ITP to NiSource, providing, however, that before disbursing the Reserve Account funds to NiSource under these circumstances, the Foundation shall obtain the Service's written approval that disbursement is appropriate.

VII. CONTACT INFORMATION/COMMUNICATIONS

- A. No obligations may be incurred, and no funds disbursed, except for the Foundation's fees pursuant to Section V above, without written approval of the NiSource Representative. All approvals, notices, and reports required or permitted under this Agreement shall be in writing and delivered by first-class mail, overnight mail, and facsimile, or electronic pdf format. Each Party agrees to notify the other promptly after any change in named representative, address, telephone, or other contact information.
- B. All deposits made to the MSHCP Fund by check shall be delivered to the Foundation's headquarters office at 1133 15th Street, NW, Suite 1100, Washington, D.C. 20005, to the attention of the Chief Financial Officer. All deposits made to the MSHCP Fund by electronic funds transfer shall be directed to the Foundation (Taxpayer I.D. Number 52-138-4139), c/o Bank of America, 730 15th Street, NW, Washington, DC 20005, ABA Bank Transit Number: _____, Account Number: _____.
- C. The individuals named below shall be the representatives of the Foundation and NiSource for purposes of this Agreement. Contact information for the Foundation Representative and NiSource Representative, respectively, is as follows (it being agreed and acknowledged that contact information for deposits to the Agency Account shall be as set forth in Section VIII(B) above):

If to the Foundation:
Jay Wright
Account Manager, IDEAs
National Fish and Wildlife Foundation
1133 15th Street, N.W.
Suite 1100

Foundation Alternate:
Courtney Kwiatkowski
Account Manager, IDEAs
National Fish and Wildlife Foundation
1133 15th Street, N.W.
Suite 1100

Washington, DC 20005
Phone: 202-595-2468
Facsimile: 202-857-0162
Email: Jay.Wright@nfwf.org

Washington, DC 20005
Phone: 202-595-2439
Facsimile: 202-857-0162
Email: Courtney.Kwiatkowski@nfwf.org

If to NiSource:

Scott Burnsworth
NiSource Gas Transmission and Storage
Natural Resource Permitting - Manager
1700 MacCorkle Ave., SE
Charleston, WV 25314
Phone: (304) 357-3572
sburnsworth@nisource.com

VIII. MISCELLANEOUS PROVISIONS

- A. No Assignment. No Party may assign this Agreement, in whole or in part, to any individual or other legal entity without the prior written approval of the other Parties and the Service.
- B. Entire Agreement; Amendments. This Agreement constitutes the entire agreement and understanding between the Parties regarding the Fund. This Agreement supersedes all prior and contemporaneous agreements, representations, or understandings regarding the Fund, if any, whether written or oral. This Agreement can only be amended by a written amendment, signed by authorized representatives of all Parties and approved in writing by the Service. Counterpart originals and/or facsimile copies of amendments are acceptable, but not emails.
- C. Additional Support. In establishing the MSHCP Fund, NiSource assumes no obligation to provide further funding or support to the Foundation beyond the terms stated in this Agreement.
- D. Dispute Resolution. The Parties will cooperate in good faith to achieve the objectives of this Agreement and to avoid disputes. The Parties will use good faith efforts to resolve disputes at the lowest organizational level and, if a dispute cannot be so resolved, the Parties will then elevate the dispute to the appropriate officials within their respective organizations.
- E. Compliance with Laws, Insurance.
 - 1. The Foundation will execute a contract with each grant recipient financed by the MSHCP Fund, requiring that the recipient comply with all applicable Federal, State, and local laws, regulations, and ordinances, and secure all appropriate necessary public or private permits and consents in connection with the mitigation work to be performed by such recipient.

2. The Foundation further agrees to execute a contract requiring the recipients to obtain and maintain all appropriate insurance against liability for injury to persons or property from any and all activities undertaken by such recipient pursuant to its contract and have the Foundation and NiSource named as additional insureds to the extent practicable.
 3. The terms of this Section will survive termination of this Agreement.
- F. **Publicity.** The Foundation agrees to give appropriate credit to NiSource and the Service for its support in any and all press releases, publications, annual reports, video credits, dedications, and other public communications regarding this Agreement or any of the projects associated with this Agreement. The Foundation shall give the Service and NiSource the opportunity to review and comment on any and all public communications prior to their release.
- G. **Severability.** If any provision, or the application of any provision, of this Agreement is held to be unlawful or invalid by any court of law with duly established jurisdiction over this Agreement, the Parties intend that the remainder of this Agreement shall remain in full force and effect.
- H. **Responsibility for Conduct.** Each Party shall be responsible for the consequences of its own actions or inaction, willful misconduct, gross negligence, and/or breach of fiduciary obligation in connection with this Agreement, and in connection with any work undertaken in accordance with this Agreement.
- I. **Additional Documentation.** From time to time, hereafter, the Parties may be called upon to approve and/or execute such instruments and other documents and take other such actions, upon the request of one of the other Parties, as may be reasonably necessary to carry out the terms of this Agreement. Such approval, execution, or other action as appropriate, shall not be unreasonably withheld.
- J. **No Discrimination.** In the performance of obligations and responsibilities under this Agreement, the Parties shall comply with the requirements of Title VI of the Civil Rights Act of 1964 (78 Stat. 252; 42 U.S.C. § 2000d *et seq.*); Title V, Section 504 of the Rehabilitation Act of 1973 (87 Stat. 394; 29 USC Section § 794); the Age Discrimination Act of 1975 (89 Stat. 728; 42 USC § 6101 *et seq.*); and, with all other laws and regulations prohibiting discrimination against any person because of race, color, national origin, handicap, religion, or gender.
- K. **Disclaimers.** The Foundation shall ensure that all information submitted for publication or other public releases of information regarding this Agreement or any project funded by the MSHCP Fund shall carry the following disclaimer:

The views and conclusions contained in this document are those of the authors and should not be interpreted as representing the official policies or opinions of the U.S. Government. Mention of trade names or commercial products does not constitute their endorsement by the U.S. Government.

- L. Appropriations Not Obligated. No appropriated funds will be placed in the MSHCP Fund and nothing in this Agreement may be construed to obligate the United States or the Service to any current or future expenditure of money in advance of the availability of appropriations for such purposes from the U.S. Congress.
- M. Service's Limited Role. In the very limited circumstances that NiSource becomes insolvent, fails to satisfy the requirements of the MSHCP, NiSource ITP and IA, or is disqualified from permit coverage, the Service, on a temporary or emergency basis, may request disbursement to satisfy any outstanding obligations consistent with the MSHCP, NiSource ITP and IA. Nothing contained in this Agreement is intended to limit the authority of the Service to fulfill its responsibilities under applicable laws. This Agreement is not a substitute for compliance with applicable Federal laws.
- N. No Agency/Partnership. This Agreement shall not make or be deemed to make any Party to this Agreement an agent for or the partner of any other Party. This Agreement does not create nor should it be construed to create an exclusive arrangement between the United States, NiSource, and/or the Foundation.
- O. No Third-Party Beneficiaries. Notwithstanding the above, this Agreement shall not be the basis of any claims, rights, causes of action, challenges, or appeals by any person not a party to this Agreement; nothing in this Agreement shall be construed to create privity of contract between NiSource and any third parties, including recipients of grants or contractors of the Foundation whose projects are financed by the MSHCP Fund.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed by their respective authorized representatives, intending to be bound legally.

National Fish and Wildlife Foundation

By: _____ Date: _____
 Jeff Trandahl, Executive Director

Columbia Gas Transmission, LLC, Columbia Gulf Transmission Company, Crossroads Pipeline Company, Central Kentucky Transmission Company, and NiSource Gas Transmission and Storage Company,

By: _____ Date: _____